

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4273 of 1998

J.V.T.Cabral	Petitioner
Vs.	
1(a) Muktaben Ratilal Patel & ors.	Respondents

Mr.Behram Shroff with Mr.S.S.Jinsiwale for
petitioner.

Mr.Suresh Gole for Resp.Nos.1(B), 2 and 3.

CORAM: B.H.MARLAPALLE,J.

August 02, 2006.

P.C.

. Heard the learned counsel for the respective parties. This petition filed under Article 227 of the Constitution impugns the order dated 29/7/1998 passed by the learned Judge of the City Civil Court at Mumbai thereby allowing the oral application for amendment of the plaint.

. While issuing notice, ad-interim relief in terms of prayer clause (b) was granted by this Court pending admission of the petition and during the last about eight years this petition is waiting for admission for some reason or the other. While deciding A.O. No.820 of 1986 this Court vide its judgment dated 24th September 1997 had directed the trial Court to dispose of S.C.Suit No.1706 of 1985

within one year from 24/9/1997 and the suit trial remained stayed because of the ad-interim order passed in this writ petition in August 1998 i.e. just about one month prior to the expiry of the deadline set out by this Court in A.O. No.820 of 1986. This is a classic example where the suit is pending for the last about 21 years due to law's delays.

. The learned counsel for the petitioner placed reliance on the following two decision in support of his challenge to the impugned order:

. (1) Lalji Ranchhoddas v. Narottam Ranchhoddas [AIR 1953 Nagpur 273] and (2) Pandit Rudranath Mishir v. Pandit Sheo Shankar Missir & ors. [AIR 1983 Patna 53].

There is no doubt that due to the impugned amendment having been granted the monetary jurisdiction of the City Civil Court has been confirmed and it does appear from the Division Bench decision in the case of Lalji Ranchhoddas (Supra) that such a course was not available to the trial Court and the remedy for the plaintiffs was to withdraw the suit and file a

fresh one. Therefore, the petitioner made out points for consideration in this petition warranting its admission. Nonetheless Mr. Gole, the learned counsel for the original plaintiffs fairly conceded that it would be appropriate to dispose off the petition by setting aside the impugned order and granting liberty to the plaintiffs to move a fresh application for amendment so that the trial of the suit proceeds rather than keeping this petition pending along with the stay to the suit's trial.

. Hence the petition is disposed off by setting aside the impugned order dated 29/7/1998 and the plaintiffs are granted liberty to present fresh Chamber Summons in S.C. Suit No.1706 of 1985. If such an application is filed within a period of four weeks from today, the trial Court shall dispose it off as expeditiously as possible and preferably within a period of eight weeks from its presentation. Ad-interim order passed by this Court on 14/8/1998 is hereby vacated. Trial of the suit is expedited.

(B.H.MARLAPALLE,J.)